

## **INITIAL STATEMENT OF REASONS:**

This action amends provisions governing statewide vendors throughout all of the institutions/facilities within the California Department of Corrections (Department). This action will convert the inmate quarterly package program to a statewide vendor inmate quarterly package program, standardize the Special Purchase process to include vendor packages, as well as aid in the safety and security of the prisons and the public. This action is necessary as required by Budget Letter 03-21, Personal Services Reduction Plan. Pursuant to this reduction plan, the Department of Corrections must implement a 16 percent reduction plan by converting to a Statewide Vendor Package Program to be implemented January 1, 2004. In order to comply with the Governor's Budget, it is necessary that these regulations be promulgated on an emergency basis.

Currently, the Department authorizes each institution head to limit the amount and type of personal property each inmate is allowed to possess. Inmate correspondents, i.e. family, friends, etc., are allowed to purchase and send inmates a wide range of items in special purchases and quarterly packages. This creates a tremendous workload at the institutions in regards to handling and searching of the products for contraband and non-allowable items, makes it difficult to detect contraband during cell searches, and expands places in which inmates could hide contraband, which in turn could compromise security. Inmates are also allowed to purchase a wide range of items in special purchases, nullifying the intent of existing Section 3092(a), which allows for the purchase of items not regularly stocked in institutional canteens. Additionally, the absence of standardized policies leads to the perception of disparate treatment amongst the institutions.

The Department weighed institutional concerns against the concerns of inmates in order to determine reasonable personal property standards. Reasons supporting the personal property standards are: (1) reduction of inmate personal property claims; (2) reduction of bartering or trading between inmates; (3) reduction of inmates ability to intimidate other inmates into providing personal property; (4) increase in staff's ability to detect contraband, drugs, and weapons; (5) reduction of the possibility of fire in the quarters/living area; and (6) in the interest of security and safety.

There are five basic privilege groups within the Department. Privilege Groups A and B are described as follows:

- Privilege Groups A (Full-time work/training assignment) and B (Half-time work/training assignment) are predominately those inmates with good work and behavior history. These privilege groups will be the least restricted.

Based on security needs, the requirement to provide a safe work environment for staff and living environment for inmates, the Department has chosen to be more restrictive with Privilege Group C, and the most restrictive with Privilege Groups D and U, which are described as follows:

- Privilege Group C are those inmates that refuse to participate in work or academic programs. These inmates have chosen not to be involved in activities and programs, thereby refusing to be a contributing member of the inmate population. Inmate property is restricted in an effort to bring about compliance with Penal Code Section 2700. Those inmates who demonstrate a willingness to program and abide by departmental regulations are rewarded with fewer restrictions.
- Privilege Group D are those inmates who are removed from the general population due to disciplinary or administrative reasons while incarcerated. Those inmates who have been involved in disruptive and/or violent behavior will have greater restrictions.
- Privilege Group U are those inmates that are new to the Department and have yet to be identified or classified. Additionally, due to their transient nature, pending processing for placement from a reception center to other institutions, their property is restricted. Upon arrival at their designated institution, the inmate will be assigned to a privilege group.

Those inmates who are in Privilege Groups C and D will not be allowed the same or as many of the items as those inmates who are in Privilege Groups A and B. An inmate's privileges increase as their behavior warrants and as their participation increases. To allow a Privilege Group C inmate to possess the same property as a Privilege Group A inmate defeats the purpose and intent of the Department's Work/Training Incentive Program. Those inmates in the Reception Centers are allowed very few items of personal property as they are housed in the Reception Centers temporarily pending transfer to their institution.

These provisions expand the special purchase procedure and allow inmates to obtain personal property via departmentally approved vendors. These provisions allow inmate correspondents (outside entities such as inmate family members and friends) to send packages to inmates by first ordering items directly from departmentally approved vendors who will then send the packages to the institutions/facilities. Special purchases include, but are not limited to such items as health care

appliances, religious items, and correspondence courses. Inmates may acquire these special purchase items through departmentally approved vendors only, either by purchasing items using their inmate funds or by receiving the items from outside entities, otherwise known as correspondents. In addition to special purchases, inmates may acquire authorized personal property packages based upon their work/training incentive group or privilege group. These items, formerly referred to a “quarterly packages,” may now be ordered by inmates or their correspondents, and shall be shipped to the inmate’s institution/facility by the departmentally approved vendor in a factory sealed container.

The Department will ensure that the vendor process will be fair and equitable to all inmates and their correspondents by requiring that vendors charge no more than ten percent above the standard retail price of an item as determined in major markets. The Department is also encouraging competitive pricing by allowing the use of multiple vendors. Vendors with higher prices or inferior merchandise will lose business to vendors with lower prices or superior merchandise as inmates and their correspondents will make purchases based on a combination of cost and quality. Departmentally approved vendors will also either stock cultural food differences or act as an intermediary in a purchase. Departmentally approved vendors will offer wide varieties of items to ensure that inmates maintain a sense of “personal touch” from their correspondents.

Existing language states that the amount charged an inmate for special purchase items shall include normal taxes and a 10 percent service charge based upon the purchase price. This service charge is to cover the cost of processing the inmate’s purchase order, and is deposited in the inmate trust fund. Existing language does not, however, allow inmates to purchase personal property packages (also referred to as quarterly packages); these packages were typically sent in from their correspondents. The proposed regulations allow inmates to purchase personal property packages from a departmentally approved vendor. Additionally, inmate initiated personal property package purchases will include normal taxes and the 10 percent service charge. Special purchases or personal property packages purchased by correspondents of inmates will not be charged the 10 percent service charge. Furthermore, existing language provides an exception to the 10 percent service charge when the inmate purchases medical appliances, correspondence courses, nonfiction books, and legal materials. The proposed regulations amend this language to include religious items as an exemption.

Changes for improved clarity, including reference and grammatical corrections, and changes in punctuation, are made to meet current departmental standards.

**Subsections 3044(a) through (d)(3)(F) are unchanged.**

**Subsection 3044(d)(3)(G) is amended** to change the name of inmate packages from special canteen packages to personal property packages. These packages are not purchased from the institution’s canteen, but from departmentally approved vendors, therefore the name change is necessary to accurately reflect what these packages are. Packages that contain approved personal property, may be purchased by the inmate or received by inmate correspondents via departmentally approved vendors.

**Subsection 3044(d)(3)(H) is amended** to specify that Condemned Grade A inmates shall be afforded the same property privileges as Privilege Group A. Inmates are allowed to possess personal property based on their behavior, custody level, and gender. The possession of personal property is not based on the degree of an inmate’s individual crime. It is necessary to provide Condemned Grade A inmates, with a good behavior history, incentive to participate in work or academic programs. Pursuant to the Thompson Consent Decree, *Thompson, v. Enomoto*, 915 F. 2d 1383(9<sup>th</sup> Cir. 1990), involving condemned inmates the following are definitions of Grades A and Grade B Condemned Inmates. Grade A Condemned Inmates are inmates without high violence or escape potential who have demonstrated a good disciplinary free adjustment and are able to get along safely and peaceably with other inmates and staff. They are provided a form of custody that includes contact visits, out-of-cell time, and some privileges similar to those provided to the general population prisoners.

**Subsection 3044(e)(1) through (e)(3)(F) is unchanged.**

**Subsection 3044(e)(3)(G) is amended** to change the name of inmate packages from special packages to personal property packages. The name change is necessary to accurately reflect what these packages are. These packages are one of the authorized methods for obtaining approved personal property. This name also differentiates these personal property packages, defined in Section 3190(d), from special purchases, which are defined in Section 3190(e).

**Subsection 3044(e)(3)(H) is deleted** to remove special canteen purchases language since the processing of special purchases is no longer handled by the canteen at the local institution.

**Subsection 3044(f)(1) through (f)(3)(E) is unchanged.**

**Subsection 3044(f)(3)(F) is amended** to change the name of inmate packages from special packages to personal property packages. The name change is necessary to accurately reflect what these packages are. These packages are one of the authorized methods for obtaining approved personal property. This name also differentiates these personal property packages, defined in Section 3190(d), from special purchases, which are defined in Section 3190(e).

**Subsection 3044(f)(3)(G) is deleted** to remove special canteen purchases language since the processing of special purchases is no longer handled by the canteen at the local institution.

**Subsection 3044(g)(1) through (g)(4)(E) are unchanged.**

**Subsection 3044(g)(4)(F) is amended** to permit an inmate to “acquire” instead of “receive” one personal property package per year exclusive of special purchases. Inmates may now either have personal property packages sent to them via a departmentally approved vendor by their correspondents or they may initiate the purchase via a departmentally approved vendor. Eligibility to acquire a personal property package commences one year after the date of Privilege Group D assignment. This is an incentive for inmates who are currently in Privilege Group D to demonstrate that if they are willing to correct their behavior, to program and abide by departmental regulations for one year.

**Subsection 3044(g)(4)(G) is amended** to delete text that previously stated that Privilege Group D inmate’s one special canteen purchase of one television or one radio, or one radio/TV combination unit. This is necessary due to the fact that Privilege Group D inmates are those who are removed from the general population for disciplinary or administrative reasons while incarcerated; therefore, for the safety and security of the institution/facility, electronic appliances are no longer allowed for Privilege Group D. Additionally, (G) is amended to specify that Condemned Grade B inmates shall be afforded the same property privileges as Privilege Group D. Inmates are allowed to possess personal property based on their behavior, custody level, and gender. The possession of personal property is not based on the degree of an inmate’s individual crime. Condemned Grade B inmates are inmates who have been involved in violence and have the most restrictions. Pursuant to the Thompson Consent Decree, *Thompson, v. Enomoto*, 915 F. 2d 1383(9<sup>th</sup> Cir. 1990), involving condemned inmates the following are definitions of Grades A and Grade B Condemned Inmates. Grade B Condemned Inmates demonstrate a high escape or violence potential or who are serious disciplinary or management cases. They are provided only those rights and privileges that are provided to prisoners in maximum-security segregation.

**Subsection 3044(h)(1) through (h)(3)(E) is unchanged.**

**Subsection 3044(h)(3)(F) is deleted** to remove special canteen purchases language since the processing of special purchases is no longer handled by the canteen at the local institution.

**Subsection 3044(h)(3)(G) is renumbered to (h)(3)(F) and amended** to change the name of inmate packages from special packages to personal property packages. The name change is necessary to accurately reflect what these packages are. These packages are one of the authorized methods for obtaining approved personal property. This name also differentiates these personal property packages, defined in Section 3190(d), from special purchases, which are defined in Section 3190(e).

**Subsection 3044(i) is unchanged.**

**The Note Section in section 3044 is amended** to include reference to the court case *Thompson v. Enomoto*, 915 F.2d 1383 (9<sup>th</sup> Cir. 1990). This case provides a definition for Condemned Grade A and Grade B inmates as referenced in subsections (d)(3)(H) and (g)(4)(G).

**Section 3092 is relocated to Subchapter 2, Article 9, Section 3190 and renumbered to subsections (e) and (f), respectively.**

**Subsections 3138(a) through (c) are unchanged.**

**Subsection 3138(d)(1) is amended** to direct facilities to make available to inmates the procedures for the receipt of packages from their correspondents via departmentally approved vendors. Institutions/facilities will no longer individually establish procedures for the receipt of packages but will make statewide regulations available to inmates enabling them to provide information to their correspondents. Additionally, all packages sent from the inmate correspondents shall be received from departmentally approved vendors. Departmentally approved vendor catalogs and order forms will be available in the inmate library, and will be made available to inmate correspondents by the vendors. The use of departmentally approved vendors will reduce processing costs incurred by institutions, when staff search incoming inmate packages because all packages will

be shipped directly from departmentally approved vendors and all items will be factory sealed. This will allow inmate correspondents a wide variety of products to choose from at fair market value, and will enable staff to quickly search packages ensuring the safety and security of the institutions. The Department will ensure that the vendor process will be fair and equitable to all inmates and their correspondents by requiring that vendors charge no more than 10 percent above the standard retail price of an item as determined in major markets. The Department is also allowing competitive pricing by the vendors. Vendors with higher prices or inferior merchandise will lose business to vendors with lower prices or superior merchandise as inmates and their correspondents will make purchases based on a combination of cost and quality. Departmentally approved vendors will also either stock cultural food differences or act as an intermediary in a purchase. Departmentally approved vendors will offer wide varieties of items to ensure that inmates maintain a sense of “personal touch” from their correspondents. Many of the items available to inmate correspondents will be the same, or very similar, to items available in local department stores, chain stores, and warehouse type stores.

Additionally, this subsection amends language regarding the facility’s right to refuse to deliver a package if the inmate is not qualified to receive the package and dispose of the package without the need to hold the package pending appeal as provided in subsection 3147. For example, if an inmate refuses to work and is placed in another privilege group, [i.e. Privilege Group C, Section 3044(f)] the inmate is no longer qualified to receive a package. This amendment is necessary to ensure that inmates who are eligible to receive packages receive those packages in a timely manner. Additionally, existing reference subsection 3147(a)(6) is an incorrect reference because it refers to mail being sent out of the institution by an inmate. The reference is corrected to read subsection 3147(a)(5) which refers to packages that are addressed to an inmate.

Additionally, if the package is in excess of the 30-pound limit or is damaged, the package shall be returned to the vendor at the vendor’s expense. This will ensure that vendors ship packages that meet the Department’s 30-pound weight limit for inmate packages. It also makes the vendor responsible for a package that is damaged in route to the institution/facility. It will be the vendor’s responsibility to file any necessary claims with the common carrier.

**Subsections (d)(2) through (g) are unchanged.**

**Subsection 3190(a) is amended** to permit inmates to possess in their quarters/living area, state-issued property and authorized personal property based upon privileges in Section 3044, and subject to disciplinary provisions in Sections 3314 and 3315. Language is deleted that allowed individual institutions to establish a list of personal property items and the maximum amount of such items an inmate may possess. This is necessary to establish statewide regulations standardizing inmate property practices throughout all of the institutions/facilities. This action will limit the amount, and restrict the type, of personal property an inmate is allowed to possess, as well as aid in the security of the prisons, and protect the safety of the public. Privileges, including packages, will be based upon privileges set forth in Section 3044, i.e., Privilege Groups A and B may receive four personal property packages per year; however, Privilege Group C will not be allowed personal property packages. Additionally, the possession of state-issued and personal property is also subject to disciplinary provisions set forth in Sections 3314 and 3315, i.e., inmates who are found guilty of a serious rule violation may have their privileges suspended for no more than a 90-day period and may be assessed by placing the inmate into a different privilege group with different allowable property.

**Subsection 3190(b) is unchanged**

**New Subsection 3190(c) is amended** to delete language regarding providing other institutions with a current list of allowable inmate personal property when the inmate transfers. These proposed regulations standardize the intake of inmate property through a statewide vendor process; therefore, making it unnecessary to provide other institutions with two copies of the institution’s current list of allowable inmate personal property since property would be standardized statewide after the promulgation of these regulations. During the transfer of an inmate to another institution, staff shall be required to inventory the inmate’s property and ensure the proper disposition of any property not allowed at the receiving institution as a result of privilege group changes.

**Subsection 3190(d) is adopted** to allow inmates to acquire authorized personal property packages based upon their privilege group, pursuant to Section 3044. Personal property packages include various items, which can be purchased by inmate correspondents and sent to the inmate via departmentally approved vendors, or items purchased by inmates from vendor catalogs and shipped to the inmate via departmentally approved vendors. These packages, formerly referred to as “quarterly packages,” shall be shipped to the inmate’s institution/facility by the departmentally approved vendor in a factory sealed container.

Inmate correspondents will be able to choose from a list of vendors, and also select items from a voluminous list of products aimed at satisfying many of the inmate's wants and needs, and providing that "personal touch" feeling that many inmate's desire during their incarceration.

These provisions benefit the inmate by allowing them, pursuant to their privilege group, to now initiate an order for items included in a package without depending on their correspondents or other entities to send them a 30-pound package. This allows inmates work at the institution/facility and deposit those funds in their trust account. Additionally, this allows inmates without any correspondents, or who in the past have not received packages from family and/or friends, to now order a personal property package from departmentally approved vendors.

**New subsection 3190(e) is relocated from Section 3092(a) and is renumbered and amended** to delete language that states facilities shall establish procedures for inmate purchase of personal property items not stocked in the canteen. Inmate purchases in this section are now referred to as special purchases. This name change is necessary to differentiate personal property packages from special purchases. Inmates shall be allowed special purchases of authorized personal property items from departmentally approved vendors.

Inmates may acquire these special purchase items in two ways, either by purchasing the items themselves through departmentally approved vendors or by receiving the items from outside entities, otherwise known as correspondents. Special purchases requiring prior approval from designated staff are specific to an inmate's health (healthcare appliances), education (correspondence courses), religious (medallions, etc.) or handicraft materials. Special purchase orders can be placed for such items as legal material, if unavailable in the canteen, entertainment appliances and musical instruments, subject to qualifying privilege group, or the purchase of books and subscriptions to periodicals, subject to the requirements in Section 3006.

**Subsection 3190(f) relocated from Section 3092 and is amended** to include personal property packages as part of the purchases that will include normal taxes and a 10 percent service charge based upon the purchase price. This is necessary due to the fact that inmates are now able to use their inmate trust funds to purchase personal property packages. The basis for the 10 percent service charge is that it covers the institutions costs in processing inmate-generated purchases whether they are special purchases or personal property package orders.

Additionally, exceptions to the 10 percent service charge now include religious items. Existing language was changed from "medical appliances" to "health care appliances." This is necessary to change old terminology "medical" into new, commonly referred to terminology, "health care." The new terminology encompasses a broader scope of appliances such as orthotic-type shoes, knee braces, etc., as opposed to the old language, which referred to items such as eyeglasses, prosthetics, etc.

#### **ALTERNATIVE CONSIDERED:**

The Department must determine that no alternative considered would be more effective in carrying out the purpose of this action, or would be as effective and less burdensome to affected persons.